Supreme Court, U.S.
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In The

Supreme Court of the United States

ROBERT BAUER, ET AL.,

Petitioners,

versus

DEAN MORRIS, L.L.C., ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. 12 U.S.C. §1819(b)(2) provides that "all suits of a civil nature" to which the FDIC "***is*** a party" shall be "deemed to arise under" federal law, thus giving a United States District Court federal question jurisdiction of such suits. The FDIC joined both of the companion cases at bar when a defendant lender became insolvent. But the insolvent lender was actually a defendant in only one of the cases, thus the FDIC substituted itself in error in the other case. Nonetheless, both cases were removed to U.S. District Court, with jurisdiction based on 12 U.S.C. §1819(b)(2). Shortly thereafter, the FDIC was dismissed from both cases. The only remaining defendants were wholly unrelated to the FDIC and they faced exclusively state law claims. The district court exercised its discretion to remand those claims to state court. Did the Fifth Circuit err in holding, contrary to this Court's reasoning in *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 348, 108 S.Ct. 614, 618 (1988), contrary to decisions of the Second, Third, Eighth, Ninth and Tenth Circuits, and contrary to the plain language of the statute, that 12 U.S.C. §1819(b)(2) divests the district court of its discretion to remand state law claims against parties unrelated to the FDIC, even after the FDIC is dismissed?

2. The Fifth Circuit used the rationale that "the power to remove is evaluated at the time of removal," when it held that federal jurisdiction continued to

QUESTIONS PRESENTED – Continued

exist pursuant to §1819 even after the FDIC is dismissed. But here, jurisdiction at the time of removal is questionable because the FDIC was substituted in error and was never a proper party to the *Bauer* case, one of the companion cases at issue here. Because the FDIC should not have been a party in *Bauer* and its presence should not have served as the basis for the district court to exercise original jurisdiction, did the Fifth Circuit err in holding that the district court must continue exercising original federal jurisdiction over the *Bauer* case?

3. Did the Fifth Circuit's conclusion that the transitory (and, in the *Bauer* case, erroneous) presence of the FDIC in a case irrevocably federalizes all state law claims exceed Constitutional limits of the "arising under" jurisdiction?

PARTIES TO THE PROCEEDING IN THE FIFTH CIRCUIT AND RULE 29.6 STATEMENT

The Petitioners, plaintiffs/appellees in the court below, are:

1. Alex Hartley
2. Brian Battiste
3. Charles K. Battiste
4. Debra Ellzey-Herron
5. Jacqueline Withrow
6. Edward Carter
7. Helen Carter
8. Helen Ratcliff
9. Jawana Acklin
10. Larry Patterson
11. Leonard Acklin
12. Mary Patterson
13. Ronald Singleton
14. Thomas Thibodeaux
15. Willie Brown
16. Alton Pierce
17. Debra Bright
18. Jim T. Bright
19. Karen Duckworth
20. Keenan Duckworth

PARTIES TO THE PROCEEDING IN THE FIFTH CIRCUIT AND RULE 29.6 STATEMENT – Continued

21. Lionell J. Coleman
22. Lynn L. Coleman
23. Matthew David Dyer
24. Robert Bauer
25. Rosalyn Veleary-Dodge
26. Salome Lucineo Boyd
27. Terese LaBeaud
28. Terry Hardy, Sr.
29. Marsha D. Gilmore
30. Marlene Aubert

None of the foregoing Petitioners are corporations.

The Respondents, defendants/appellants in the court below, are:

1. Countrywide Home Loans, Inc.
2. Mortgage Electronics Registration Systems, Inc.
3. Chase Home Finance, LLC
4. JPMorgan Chase Bank
5. Aurora Loan Services, LLC
6. Dean Morris, L.L.P.
7. Candice A. Courteau
8. Charles H. Heck, Jr.

PARTIES TO THE PROCEEDING IN THE FIFTH CIRCUIT AND RULE 29.6 STATEMENT – Continued

9. George B. Dean, Jr.

10. John C. Morris, III

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The decisions of the Fifth Circuit in these cases granting summary reversal were based on the Fifth Circuit's just-released opinion reported at *Adair v. Lease Partners, Inc.*, 587 F.3d 238 (5th Cir. 2009).

JURISDICTION

The Fifth Circuit issued its Orders on January 25, 2009, App. 1, and March 17, 2009, App. 3. This Court has jurisdiction pursuant to 28 U.S.C. §1254, and this Petition is timely pursuant to 28 U.S.C. §2101(c) and Supreme Court Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2, Clause 1 of the United States Constitution provides in pertinent part:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States,

> and Treaties made, or which shall be made, under their Authority; . . . to Controversies to which the United States shall be a Party;. . . .

Title 12, Chapter 16 of the United States Code, addresses the nature of civil actions in which the Federal Deposit Insurance Corporation (the "Corporation" or "FDIC") is a party, and provides in pertinent part at 12 U.S.C. §1819(b)(2)(A):

> (A) In general
>
> Except as provided in subparagraph (D), all suits of a civil nature at common law or in equity to which the Corporation, in any capacity, is a party shall be deemed to arise under the laws of the United States.

Concerning removal by the FDIC, 12 U.S.C. §1819(b)(2)(B) provides:

> (B) Removal
>
> Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.

Concerning supplemental jurisdiction, 28 U.S.C. §1367(a) provides:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by

> Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

Concerning the district court's discretion to decline to exercise supplemental jurisdiction, 28 U.S.C. §1367(c) provides:

> (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if –
>
> (1) the claim raises a novel or complex issue of State law,
>
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
>
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
>
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

Concerning the district court's discretion to remand, 28 U.S.C. §1441(c) provides:

> Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

STATEMENT OF THE CASE

This case involves systematic overcharges of Petitioners by Respondent, Dean Morris, L.L.P. ("Dean Morris"), a firm of collection lawyers who at one time handled the majority of residential mortgage foreclosures in the state of Louisiana. Sued along with the Dean Morris defendants were several lenders who employed the Dean Morris attorneys to do foreclosures, including Respondents Countrywide Home Loans, Inc. ("Countrywide"), Chase Home Finance LLC, JPMorgan Chase Bank, N.A., Mortgage Electronics Registration Systems, Inc., and Aurora Loan Services, LLC.

Petitioners, Robert Bauer, *et al.*, representing a class of similarly situated persons, are persons against whom collection activities or foreclosure proceedings were commenced by defendants, and who were charged by those defendants for overstated

sheriff's fees, clerk's fees, attorney's fees, and other expenses.

Petitioners filed two companion state court class action lawsuits, the *Bauer* case and the *Patterson* case, on 17 February 2005. Only state law causes of action were pled; they included, *inter alia*, fraud, misrepresentation, conversion, and unjust enrichment. App. 31. All federal claims were specifically disclaimed. App. 42-43. There is no substantive difference in the claims and facts surrounding each lawsuit; rather only the membership of each respective class differs.

Despite the fact that all federal causes of action were specifically disclaimed, these cases were removed two times previously. In mid-2005, the cases were removed because defendants alleged that an additional bill for costs from the state court clerk's office after the effective date of the Class Action Fairness Act (CAFA) created federal jurisdiction. The district court disagreed; defendants appealed to the Fifth Circuit Court of Appeal, which affirmed the propriety of the remand. *Patterson v. Dean Morris, L.L.P.*, 448 F.3d 736 (5th Cir. 2006). In 2007, a routine substitution of a class representative triggered another removal, the defendants contending that the substitution re-started the CAFA clock. The district court again remanded and the Fifth Circuit declined to hear another appeal.

This application arises from a third removal prompted by the short term and improper intervention of the FDIC. In September 2008, Washington Mutual Bank, one of the lender defendants, became insolvent. On September 25, 2008, the Director of the Office of Thrift Supervision appointed the FDIC as Receiver for Washington Mutual Bank. Soon thereafter, the FDIC filed *ex parte* motions with the state court to be substituted in both *Bauer* and in *Patterson*. The orders were not provided to Petitioners prior to being presented to the court and were signed by the trial judge as a matter of routine on November 25, 2008. App. 22, 24. But Washington Mutual Bank was not a defendant in the *Bauer* matter. On May 8, 2007, the single plaintiff with a claim against Washington Mutual Bank, Willie Lee Rauls, had been dismissed by the state court. App. 29. Therefore, the FDIC improperly substituted itself as a party in the *Bauer* case.

The presence of the FDIC as a party changed the character of these otherwise non-removable cases to ones "aris[ing] under the laws of the United States" by virtue of 12 U.S.C. §1819(b)(2). Immediately, on November 26, 2008, Dean Morris removed both cases to federal court, again despite the fact that Washington Mutual was not a party to the *Bauer* case and that, thus, the FDIC was not a proper party to *Bauer*. FDIC and other defendants later joined in the removals. Petitioners filed Motions to Remand. In the interim, Petitioners demonstrated to the FDIC that Washington Mutual, for which FDIC had

substituted itself, was not a party to the *Bauer* case. Ultimately, Petitioners and the FDIC agreed to enter dismissals, and the district court dismissed all claims against the FDIC, completely eliminating the FDIC from both cases. App. 17, 19.

On August 12, 2009, with FDIC out of both cases, the district court, citing to the "is a party" language of 12 U.S.C. §1819(b)(2)(A), found that the suit was no longer "deemed to arise under the laws of the United States." It then used its discretion to remand both cases, which assert purely state law claims, back to the state court in which the cases had been pending for more than four years. App. 7. Defendant Countrywide timely noticed an appeal to the Fifth Circuit in *Patterson* and in *Bauer* on August 24, 2009. While these appeals were still pending, the Fifth Circuit released its opinion in *Adair* on October 28, 2009. *Adair v. Lease Partners, Inc.*, 587 F.3d 238 (5th Cir. 2009).

In *Adair*, borrowers brought an action in state court against national bank lenders alleging state law fraud, negligence, breach of contract, and usury claims. *Id.* at 240. After more than eleven years of litigation, the FDIC entered the case as a receiver for a successor bank to one of the defendant lenders. *Id.* The FDIC timely removed the case to federal district court pursuant to 12 U.S.C. §1819(b)(2). *Id.* Plaintiffs then filed a motion to dismiss all claims against the FDIC and a motion to remand the case to state court. *Id.* The district court dismissed the claims against the FDIC. *Id.* With the FDIC no longer a party, the

district court held that it no longer had original federal jurisdiction and used its discretion to remand the predominantly state law claims. *Id.*

The Fifth Circuit expressly found that "the district court had very good reasons for remanding." *Id.* at 241. But it went on to hold that once the FDIC intervened, all state law claims against other unrelated defendants were permanently re-characterized as claims arising under federal law pursuant to 12 U.S.C. §1819(b)(2), even if FDIC was no longer a party. *Id.* at 244-45. The Fifth Circuit reversed the remand order concluding that, even though the FDIC had been dismissed, the district court had continuing federal question jurisdiction, not supplemental jurisdiction, over all claims, and thus had no discretion to remand.[1] *Id.*

On October 30, 2009, Countrywide Home Loans filed a motion for summary reversal in the present cases, contending that the Fifth Circuit's just-released opinion in *Adair* should summarily reverse the district court's remand orders here.[2] Petitioners, in opposition, raised the flaw in the *Adair* reasoning demonstrated by the fact that the FDIC was never a proper party in the *Bauer* case. Nonetheless, the Fifth

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[1] Plaintiffs in *Adair* have a pending Petition For Writ Of Certiorari before this Court. *Glenn Allen Adair dba Super D 229, et al. v. Lease Partners, Inc., et al.*, No. 09-1125.

[2] Countrywide Home Loans' motion for summary reversal was denied in the *Patterson* appeal, but Dean Morris then filed its own motion for summary reversal.

Circuit granted, without comment, summary reversal of the district court's remand orders. App. 1, 3.

REASONS FOR GRANTING THE WRIT

A writ of certiorari should be granted because the Fifth Circuit decided an important federal question in a way that conflicts with relevant decisions of this Court; the Fifth Circuit decided an issue in a way that conflicts with the decision of other United States Courts of Appeals on the same important matter; the Fifth Circuit decided an issue in a way that conflicts with the plain "is a party" wording of the controlling statute; and the Fifth Circuit decided an important question of federal law that has not been, but should be, settled by this Court. Sup. Ct. R. 10(a), (c).

First, the Fifth Circuit's holding in *Adair* that state law claims cannot be remanded once the FDIC is no longer a party conflicts with the principle established by this Court in *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 348, 108 S.Ct. 614, 618, 98 L.Ed.2d 720 (1988), that the district courts have discretion to remand in instances where the federal interests giving rise to original removal jurisdiction have dropped out of the case.

Second, by holding that 12 U.S.C. §1819(b)(2)(A) continues to provide federal question jurisdiction over purely state law claims against parties unrelated to the FDIC *even after the FDIC is no longer a party*, the Fifth Circuit expands the scope of "arising under"

jurisdiction beyond the allowable limits of Article III, Section 2 of the United States Constitution. Moreover, the Fifth Circuit holding runs counter to this Court's holdings addressing similar issues in *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966) and *Osborn v. Haley*, 549 U.S. 225, 244-45, 127 S.Ct. 881, 896, 166 L.Ed.2d 819 (2007).

Third, the Fifth Circuit's holding that 12 U.S.C. §1819(b)(2) confers continuing original federal jurisdiction over otherwise non-removable claims, even after the FDIC is dismissed, is in direct conflict with decisions in the Second, Third, Eighth, Ninth and Tenth Circuit Courts of Appeals.

Fourth, the question presented for review is important because it addresses the scope of federal courts' original jurisdiction in recurring litigation involving the FDIC. Given the current unstable climate in the nation's economy and in the financial industry in particular, the FDIC's involvement with bank failures will surely continue to rise in the near term.[3] Thus, it is very likely that the question will

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[3] "Mergers absorbed 179 institutions during [2009], and 140 insured institutions failed. This is the largest number of bank failures in a year since 1992. The number of institutions on the FDIC's 'Problem List' rose to 702 at the end of 2009, from 552 at the end of the third quarter and 252 at the end of 2008. . . . Both the number and assets of "problem" institutions are at the highest level since June 30, 1993." *Quarterly Banking Profile: Fourth Quarter 2009*, FDIC Quarterly, Volume 4, Number 1, at 4 (2010).

continue to arise until this Court resolves the conflict among the circuits.

Fifth, the Fifth Circuit interpreted the plain statutory language making a pre-requisite for "arising under" jurisdiction that the FDIC "is a party" to mean "was a party", even if the FDIC was only in the case through error, as occurred when the FDIC erroneously "substituted" itself for a nonparty in the *Bauer* case. 12 U.S.C. §1819(b)(2)(A). The inequitable result that followed the FDIC's erroneous entry into the case demonstrates the error in the Fifth Circuit's attempt to re-write the statute. This single characteristic of the *Bauer* case renders this case worthy of review.

Finally, the Fifth Circuit erred because the district court could not continue exercising original federal jurisdiction because the district court never properly had original federal jurisdiction in the *Bauer* case. Washington Mutual Bank was no longer a defendant in the *Bauer* matter when the FDIC filed its *ex parte* motion with the state court to be substituted for Washington Mutual Bank. In other words, the FDIC should not have been a party in the *Bauer* case and its presence should not have served as the basis for the district court to exercise original jurisdiction in the *Bauer* case.

1. The Fifth Circuit's mandate that remand of state law claims is not permitted following dismissal of the FDIC conflicts with the discretion to remand state law claims granted by this Court in its *Cohill* decision.

In *Adair*, the Fifth Circuit effectively held that a proper removal under 12 U.S.C. §1819(b)(2)(A) permanently extinguishes the district court's discretion to remand in every instance because all claims in the "suit," regardless of their state or federal origin, "arise under the laws of the United States." 587 F.3d at 244-45. And even when the FDIC is dismissed, all remaining claims in the suit continue to "arise under the laws of the United States," and the district court has no discretion to remand the suit to state court. *Id.* at 245.

The Fifth Circuit in its opinion stated: "Nothing in the statute specifically addresses what happens to a court's jurisdiction, if anything, when the FDIC is dismissed as a party." *Id.* at 242. However, that statement is not correct as the use of the word "is" by Congress (instead of "ever has been" or "is or was") does specifically limit application to suits in which the FDIC "is a party". The statute is clear that it "is" the presence of the FDIC as a party that makes an otherwise state law claim "deemed" to arise under federal law:

> Except as provided in subparagraph (D), all suits of a civil nature at common law or in equity to which the [Federal Deposit

> Insurance] Corporation, in any capacity, ***is a party*** shall be deemed to arise under the laws of the United States.

12 U.S.C. §1819 (b)(2)(A) (emphasis added).

In his concurring opinion in *Adair*, Judge Jolly acknowledged that while under 12 U.S.C. §1819(b)(2)(A), the court had jurisdiction over the case, including all state claims, "that fact does not in itself mean that the court lacks discretion to remand state claims." *Adair*, 587 F.3d at 246. Based on the express language of the statute, Judge Jolly aptly noted that once the FDIC has been dismissed and its successor-in-interest is not a party, there is no longer any "federal character" in the state law claims:

> The statute gives original jurisdiction to cases in which the FDIC "is a party." 12 U.S.C. §1819(b)(2)(A). The statute does not, through some feat of alchemy, make the case's state-law claims federal-law claims. Nor does the text "*is* a party" mean that all state-law claims in any case to which the FDIC ever was a party continue to arise under federal law after dismissal of all federal interests.

Id. (emphasis in original) (concurring with the majority because there remained federal usury claims in the suit which could not be remanded).

This Court has addressed an analogous situation in the context of a removal under 28 U.S.C. §1441(a),[4] where the claims that afforded removal jurisdiction dropped out of the action. *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 108 S.Ct. 614, 98 L.Ed.2d 720 (1988). That statute, like 12 U.S.C. §1819(b) here, is silent as to whether the district court is required to continue to exercise jurisdiction when the federal claims giving rise to removal jurisdiction are dropped from the case. *Id.*, 484 U.S. at 353, 108 S.Ct. at 621. After reviewing the history and justification for the doctrine of pendent jurisdiction, this Court extended the doctrine to afford district courts the discretion to remand state law claims once the claims that provided removal jurisdiction have dropped out of the case. *Id.*, 484 U.S. at 357, 108 S.Ct. at 623.[5]

In a recent concurring opinion, Justice Breyer observed that the law grants a district court broad discretion to determine whether it should keep a case

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[4] "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. §1441(a).

[5] Subsequent to the *Cohill* decision, Congress enacted 28 U.S.C. §1367 which provides that the "district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. §1367(c)(3); *Batiste v. Island Records Inc.*, 179 F.3d 217, 227 (5th Cir. 1999).

that once contained federal law issues but now contains only state law issues:

> In this case, we consider a District Court's decision not to retain on its docket a case that *once* contained federal law issues but *now* contains only state law issues. All agree that the law grants the District Court broad discretion to determine whether it should keep such cases on its docket. . . .

Carlsbad Technology, Inc. v. HIF Bio, Inc., 129 S.Ct. 1862, 1869, 173 L.Ed.2d 843 (2009) (emphasis in original).

In the present cases, the state law claims against the remaining defendants are no longer federal law claims because the FDIC no longer "is" a party. The Fifth Circuit's rationale, reflected in *Adair* and the summary reversals entered in the present cases, creates fertile ground for inequitable results (such as creating federal jurisdiction when the FDIC is a party through error) and manipulation (any defendant desiring a federal forum need only concoct a basis to allege some cause of action against the FDIC). Petitioners respectfully submit that the Fifth Circuit decision in *Adair*, which that court relied upon to summarily reverse the remand orders in the instant cases, conflicts with the principle of discretionary remand authority established by this Court in *Cohill*, as well as the discretionary remand authority granted in 28 U.S.C. §1367 and 28 U.S.C. §1441(c).

2. The Fifth Circuit's interpretation of 12 U.S.C. §1819(b)(2) broadens federal jurisdiction beyond Constitutional limits.

"This Court's cases firmly establish that Congress may not expand the jurisdiction of the federal courts beyond the bounds established by the Constitution." *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 491, 103 S.Ct. 1962, 1970, 76 L.Ed.2d 81 (1983). The Fifth Circuit's interpretation of 12 U.S.C. §1819(b)(2) in *Adair* stretches federal jurisdiction beyond the limit set in the United States Constitution. Article III, Section 2, Clause 1 of the United States Constitution extends federal jurisdiction to "all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority," and "to Controversies to which the United States shall be a Party."

In *Bauer*, the FDIC substituted itself for Washington Mutual Bank in error, because it was not aware that Washington Mutual Bank had been dismissed. And in *Patterson*, the FDIC was legitimately a party but no action was taken by or against it in the case, other than the substitution, a stay, and a dismissal. Under *Adair*, the district court must maintain its jurisdiction over these cases even under these inauspicious conditions. This illustrates that if one applies *Adair* as the Fifth Circuit now requires, any party would be free at any time to create federal jurisdiction merely by adding the FDIC as a party. And having done so, the *entire case* would thereby be

irrevocably federalized, even if, as here, every single cause of action arises under state law. The Fifth Circuit's holding that the presence of the FDIC in any case, even for an hour and no matter how ill-advised, creates permanent federal jurisdiction and completely deprives the district court of authority to remand the case when the FDIC is immediately dismissed stretches federal jurisdiction beyond the limit set in the Constitution. This invitation to the manipulation of jurisdiction does not well serve the parties or the legal system.

Petitioners do not dispute that so long as the FDIC was a party to *Patterson*, Congress had the power to deem the case as one arising under the laws of the United States. However, once the FDIC was dismissed, no rational basis existed for continuing an artificial characterization that would *require* the district court to continue exercising jurisdiction over purely state law claims. To do so violates Article III, Section 2, Clause 1 of the United States Constitution because this is simply not a case "arising under" federal law or otherwise involving the United States as a party.

In *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966), this Court observed that a "federal claim must have substance sufficient to confer subject matter jurisdiction on the court." This suggests that this Court will not hesitate to review whether it is rational to construe a statute in such a manner as to *require* federal court jurisdiction over what is clearly

a state law matter.[6] Here, there simply is no substantive federal claim pending in these cases at this time under 12 U.S.C. §1819(b)(2).

The Court went on to analyze whether a federal court can or should entertain jurisdiction over state law claims where the federal claims giving rise to the court's original jurisdiction drop out of the case:

> Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well. Similarly, if it appears that the state issues substantially predominate, whether in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought, the state claims may be dismissed without prejudice and left for resolution to state tribunals.

Id., 383 U.S. at 726, 86 S.Ct. at 1139.

In *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 115 S.Ct. 2227, 132 L.Ed.2d 375 (1995), a case involving federal court review of an Attorney

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[6] It is important to distinguish between the district court's *discretion* to hear pendent state law claims versus the mandate issued by the Fifth Circuit in this case that the district court is *required* to hear Petitioners' state law claims.

General's certification under the Westfall Act, four members of this Court expressed the view that it may surpass the bounds of Article III's "arising under" clause to *require* a federal court to continue to exercise jurisdiction after all federal claims have dropped out of the case:

> As the principal opinion concedes, then, . . . its reading supposes that Congress intended federal courts to retain jurisdiction over state-law tort claims between nondiverse parties even after determining that the Attorney General's certification (and thus the United States's presence as the defendant) was improper. But there is a serious problem, on the Court's reasoning, in requiring a federal district court, after rejecting the Attorney General's certification, to retain jurisdiction over a claim that does not implicate federal law in any way. Although we have declined recent invitations to define the outermost limit of federal-court jurisdiction authorized by the "Arising Under" Clause of Article III of the Constitution, on the Court's reading this statute must at the very least approach the limit, if it does not cross the line.

Id., 515 U.S. at 441, 115 S.Ct. at 2239 (Souter, J., with whom Rehnquist, Scalia, and Thomas, JJ., joined, dissenting). Other members of this Court responded that this issue need not be addressed in *Lamagno* because diversity jurisdiction existed in that case. *Id.*, 515 U.S. at 435, 115 S.Ct. at 2236

(Ginsburg, J., with whom Stevens, Kennedy, and Breyer, JJ., joined).

More recently, this Court did address the Article III issue in *Osborn v. Haley*, 549 U.S. 225, 127 S.Ct. 881, 166 L.Ed.2d 819 (2007), another Westfall Act case. The district court rejected the Attorney General's certification and ordered the case remanded. *Id.*, 549 U.S. at 231, 127 S.Ct. at 888. The Sixth Circuit vacated the district court's order and instructed the court to retain jurisdiction over the case. *Id.* In affirming the Sixth Circuit's reversal, this Court held that once certification and removal are effected, the federal court may not remand the suit to the state court:

> In the case before us, the [Article III] question would arise only if, after full consideration, the District Court determines that Haley in fact engaged in the tortious conduct outside the scope of his employment charged in Osborn's complaint. At that point, however, little would be left to adjudicate, at least as to Haley's liability. Because a significant federal question (whether Haley has Westfall Act immunity) would have been raised at the outset, the case would "aris[e] under" federal law, as that term is used in Article III. Even if only state-law claims remained after resolution of the federal question, the District Court would have discretion, consistent with Article III, to retain jurisdiction. Considerations of judicial economy, convenience and fairness to litigants, make it

> reasonable and proper for a federal court to proceed to final judgment, once it has invested time and resources to resolve the pivotal scope-of-employment contest. Thus, under the precedent that guides us, the Westfall Act's command that a district court retain jurisdiction over a case removed pursuant to §2679(d)(2) does not run afoul of Article III.

Id. (internal quotations and citations omitted).

This Court clearly justified continuing jurisdiction under Article III – even after the district court's rejection of the Attorney General's Westfall Act certification – because the federal question presented under the Westfall Act would not be resolved until the district court had fully considered the merits of the case. However, this Court also clearly carved out an exception in the event that state law claims remained after resolution of the Westfall Act issue: "Even if only state-law claims remained after resolution of the federal question, the District Court would have ***discretion***, consistent with Article III, to retain jurisdiction." *Id.* (emphasis added) (citing *Cohill*). That is, this Court resolved the Article III issue by holding that if only state law claims remain at some point, then the district court has discretion to remand the case notwithstanding the fact that the Westfall Act provides that removal jurisdiction was to be conclusively established by the Attorney General's certification.

Since the Fifth Circuit's decision at issue here *requires* the district court to retain jurisdiction over purely state law claims following the pre-trial dismissal of all federal claims, it exceeds the bounds of Article III as well as this Court's holdings in *Gibbs* and *Osborn*.

3. The Fifth Circuit's decisions in *Adair* and in the present cases have created a split among the Circuit Courts of Appeals.

The Fifth Circuit's conclusion in *Adair*, and now in the present cases, that the district court had continuing federal question jurisdiction and thus lacked any discretion to decide whether to remand state law claims after dismissal of the FDIC has created a conflict within the federal circuits. "[T]he circuits are split on whether §1819(b)(2) continues to provide original federal subject matter jurisdiction over a case after the FDIC is dismissed." *Adair*, 587 F.3d at 242. The Second, Third, Eighth, Ninth and Tenth Circuits have held that the district court has discretion whether to hear state law claims after dismissal of the FDIC, Resolution Trust Corporation ("RTC"), or Federal Savings and Loan Insurance Corporation ("FSLIC").[7]

In *Adair*, the Fifth Circuit followed its own precedent in *FSLIC v. Griffin*, 935 F.2d 691 (5th Cir.

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[7] With the passage of FIRREA, the FDIC replaced the Federal Savings and Loan Insurance Corporation.

1991),[8] in which the court used the rationale that "the power to remove is evaluated at the time of removal," when it held that federal jurisdiction continued to exist pursuant to §1819 even after the FDIC is dismissed. *Adair*, 587 F.3d at 243 (citing *Griffin*, 935 F.2d at 696). The Fifth Circuit failed to recognize that "the power to remove" does not equate to Federalization of all claims forever. As the Third Circuit deftly noted: "[T]o the extent a black-letter rule ever existed, precluding a court from relying on post-removal events to determine whether to exercise pendent jurisdiction, the Supreme Court clearly did not feel bound by it in *Carnegie-Mellon University v. Cohill*." *Lovell Mfg., a Div. of Patterson-Erie Corp. v. Export-Import Bank of the U.S.*, 843 F.2d 725, 735 (3rd Cir. 1988) ("In *Cohill*, the Court approved a remand of a removed state law claim to state court, based on a voluntary dismissal by the plaintiffs of the federal cause of action (to which the state claim had originally been pendent) *subsequent* to the commencement of proceedings in the district court."). The Fifth Circuit stands alone in applying a "time-of-filing rationale" as a basis for continuing federal question jurisdiction in cases where neither the FDIC nor its successor-in-interest remains as a party. In turn, the Fifth Circuit also stands alone in holding the district court lacks discretion to remand state law claims in

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[8] "As *Griffin* is Fifth Circuit precedent, we are bound by its holding." *Adair*, 587 F.3d at 244.

cases where neither the FDIC nor its successor remains as a party.

The Third Circuit addressed whether the district court retained continuing *original* subject matter jurisdiction over remaining state law claims following dismissal of the RTC in a case where the RTC, as receiver, filed a state law collection suit in federal court. *New Rock Asset Partners, L.P. v. Preferred Entity Advancements, Inc.*, 101 F.3d 1492, 1502-03 (3rd Cir. 1996). The Third Circuit concluded that federal question jurisdiction ceased once the RTC was dismissed:

> Based on the language of §1441a(*l*)(1), its legislative history, and the background and purpose of FIRREA, we conclude that the plain meaning of the statute precludes continuing jurisdiction over an action where the RTC is no longer a party. Section 1441a(*l*)(1) will not support jurisdiction in this case.

Id. at 1501. The Third Circuit provided a thorough examination of the reasons the Fifth Circuit's "time-of-filing rationale" should not apply. *Id.* at 1503-04. The Third Circuit squarely held that the district court retained only *supplemental* jurisdiction under 28 U.S.C. §1367 once the RTC was dismissed and thus the district court had the *discretion* to retain jurisdiction after the RTC was dismissed. *Id.* at 1504.

The Second Circuit has addressed the same situation as that presented here: suit was filed

asserting state law claims, the FDIC became receiver of a defendant bank, the FDIC intervened and removed the case to federal court pursuant to 12 U.S.C. §1819(b)(2), and the FDIC was then dismissed. *Mizuna, Ltd. v. Crossland Federal Sav. Bank*, 90 F.3d 650, 657 (2nd Cir. 1996). The Second Circuit also did not apply the Fifth Circuit's "time-of-filing rationale" in reviewing the district court order denying remand. Instead, citing both *Cohill* and 28 U.S.C. §1367(c)(3), the Second Circuit held that the district court had discretion to remand the case to state court following dismissal of the FDIC:

> Once the district court exercised original jurisdiction over Mizuna's claim against the Bank under 12 U.S.C. §1819(b)(2) and 28 U.S.C. §1331, it also had supplemental jurisdiction over Mizuna's claim against Royal because the two claims are clearly "so related" as to be part of the same controversy. When the Bank was dropped from the case, the district court still had the *power* under 28 U.S.C. §1367 to exercise supplemental jurisdiction over the other claims. Though the court also had the *discretion* to remand the case to state court, it properly exercised its discretion to retain jurisdiction . . .

Mizuna, 90 F.3d at 657 (emphasis in original).

The Eighth Circuit likewise applied an abuse of discretion standard in *Myers v. Moore Engineering, Inc.*, 42 F.3d 452 (8th Cir. 1994). *Myers* was commenced as a state court action against real estate

developers, bank lenders and others. *Id.* at 454. Before the case went to trial in state court, the RTC intervened, substituted itself as receiver for a defendant bank lender and removed the case to federal court pursuant to 12 U.S.C. §1441(a).[9] The Eighth Circuit applied an abuse of discretion standard to determine whether the district court properly denied a motion to remand following dismissal of the RTC on the eve of trial. *Id.* (holding the district court did not abuse its discretion when the motion to remand was filed fourteen months after removal, the court had completed discovery and the case was ready for trial).

The Tenth Circuit Court of Appeals similarly applied an abuse of discretion standard in determining whether the district court properly denied remand after dismissal of the Federal Savings and Loan Insurance Corporation ("FSLIC"). *Bank of Oklahoma, N.A., Grove Branch v. Islands Marina, Ltd.*, 918 F.2d 1476, 1480 (10th Cir. 1990) (holding the district court did not abuse its discretion retaining jurisdiction when hundreds of pleadings involving multiple parties were filed prior to FSLIC's dismissal, settlements were reached, and an enormous amount

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[9] 12 U.S.C. §1441(*l*)(1) contains a provision comparable to 12 U.S.C. §1819 (b)(2): "Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction over such action, suit, or proceeding."

of time was spent by the various parties and the court in resolving the issues presented).

Also, the Ninth Circuit has issued an unpublished decision applying an abuse of discretion standard under 28 U.S.C. §1367 when determining whether a district court could decide state law claims after dismissal of the FDIC where federal jurisdiction had rested solely on the FDIC's presence in the suit.[10]

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[10] A number of district courts have also found that the courts have discretion to remand after the FDIC, RTC or FSLIC is dismissed. *See, Vivo v. IndyMac Bank, FSB*, 2009 WL 1635135, *4 (C.D. Cal. 2009) (exercising discretion to remand case to state court following dismissal of FDIC); *Bauer v. Dean Morris, L.L.P.*, 2009 WL 2496579, *3 (E.D. La. 2009) (same); *Katz v. Denn*, 2007 WL 4197488, *3 (D. Mass. 2007) (same); *Heaton v. Monogram Credit Card Bank of Georgia*, 408 F.Supp.2d 213, 221 (E.D. La. 2005) (same); *Turner v. Wells Fargo Bank*, 2005 WL 1865421, *3 (N.D. Cal. 2005) (same); *Robinson v. Alaska Properties and Inv., Inc.*, 878 F.Supp. 1318, 1319 (D. Alaska 1995) (same); *Espinosa v. DeVasto*, 818 F.Supp. 438, 444 (D. Mass. 1993) (same); *Hill v. Samuel Cabot, Inc.*, 1993 WL 343673, *4 (D. Mass. 1993) (same); *Gutierrez v. Champion Sav. Ass'n.*, 727 F.Supp. 1088, 1090 (S.D. Tex. 1989) (same); *Sheftz v. Benson*, 1995 WL 303967, *2 (E.D. Pa. 1995) (exercising discretion to remand case following dismissal of RTC); *Tackett v. California Independent Trust Deed*, 859 F.Supp. 1289, 1293-94 (C.D. Cal. 1994) (same); *Sunrise Sav. and Loan Ass'n v. LIR Development Co.*, 641 F.Supp. 744, 747 (S.D. Fla. 1986) (exercising discretion to remand case to state court following dismissal of FSLIC); *see also, F.D.I.C. v. Mustilli*, 2010 WL 147932, *2 (D. N.J. 2010) (exercising discretion to decline to hear state law claims after dismissal of FDIC); *Harris v. Police & Fire Federal Credit Union*, 1999 WL 96006, *4 (E.D. Pa. 1999) (same); *F.D.I.C. v. Wells*, 1996 WL 332801, *2 (N.D. Ill. 1996) (same).

Diehl v. F.D.I.C., 1994 WL 68239, at *2 (9th Cir. 1994).

Besides the split in the circuits, there seems to be some confusion within each circuit. This further points to the need for this Court to put the issue to rest. For example, in *Myers*, *supra*, the Eighth Circuit applied an abuse of discretion standard to determine whether the district court properly denied a motion to remand following dismissal of the RTC on the eve of trial. But in a more recent case, the Eighth Circuit has called into question, without deciding, whether the district court has discretion to remand state law claims following dismissal of the FDIC. *Casey v. F.D.I.C.*, 583 F.3d 586, 591-92 (8th Cir. 2009).

Also, in *Mizuna, Ltd.*, *supra*, the Second Circuit did not apply the Fifth Circuit's "time-of-filing rationale" in holding that the district court had discretion to remand the case to state court following dismissal of the FDIC. The Second Circuit then seemed to adopt a contrary position in a subsequent decision, *FDIC v. Four Star Holding Co.*, 178 F.3d 97, 100-01 (2nd Cir. 1999). But unlike the present cases and unlike *Mizuna*, the FDIC's successor remained as a party in *Four Star*. Cases such as *Four Star*, where the FDIC is replaced by a party that purchased the receivership assets and then remains as a party, present distinct policy reasons for retaining jurisdiction which do not exist here. For instance, if the FDIC's successor is not permitted to maintain the federal forum obtained by the FDIC, then that could impede the FDIC's ability to dispose of receivership

estates. But in an even later decision, the Second Circuit continued to cite *Mizuna* with approval. *See*, *Parker v. Della Rocco*, 252 F.3d 663, 666 (2nd Cir. 2001).

In fact, the Fifth Circuit's decision in *Adair* conflicts with earlier Fifth Circuit decisions. *See*, *Wilson v. First Gibraltar Bank, F S B, Arlington, Texas*, 1994 WL 199108, at *6 (5th Cir. 1994) (citing *Cohill* in holding that after dismissal of claims against the FDIC, the district court properly exercised discretion in dismissing pendent state law claims against other parties); *Bruneau v. F.D.I.C.*, 981 F.2d 175, 178 (5th Cir. 1992) ("dismiss[ing] out-of-hand the assertion that the district court abused its discretion in not exercising pendant jurisdiction over the state law claims" after the FDIC was dismissed from the case); and *Warfield v. Fidelity and Deposit Co.*, 904 F.2d 322, 324 (5th Cir. 1990) ("dismissal of the F.D.I.C. did not destroy subject matter jurisdiction. . . . Once the grounds for federal jurisdiction disappeared, the district court had the discretion to retain the case or to remand it." [citing *Cohill*]).

4. The FDIC was not a proper party to *Bauer*, and its erroneous intervention could not create federal jurisdiction in this case.

Using its "time-of-filing rationale", the Fifth Circuit in *Adair* relied on the fact that that the district court had jurisdiction over the case at the time of removal. 587 F.3d at 244-47. But here,

jurisdiction at the time of removal is questionable, because the FDIC was never a proper party to the *Bauer* case. The substitution of the FDIC into this case occurred in the context of the FDIC's takeover of Washington Mutual Bank. While Washington Mutual Bank was originally a party in both *Bauer* and *Patterson*, it was dismissed with prejudice from *Bauer* by the state court's Judgment dated May 8, 2007, over a year before the FDIC filed its motions to substitute. App. 26. The FDIC's motion for substitution in *Bauer* was thus filed in error, as the FDIC could become a party to that suit only if Washington Mutual Bank were a party at the time of the takeover; but the judgment dismissing Washington Mutual Bank, with prejudice, had become final long before.

It is clear that the removal in *Bauer* – based on the FDIC's "substitution" for Washington Mutual Bank, which was not a party – was improper. Insofar as the FDIC was not a proper party to *Bauer*, its erroneous intervention could not create federal jurisdiction in this case. There is no valid basis for challenging the remand in *Bauer*, as there was no basis for the district court to exercise jurisdiction at any time.

CONCLUSION

The Fifth Circuit has determined that once the FDIC intervenes or is added as a party to a lawsuit,

all state law claims against other unrelated defendants are permanently re-characterized as claims arising under federal law, even if the FDIC was never a proper party, and even after the FDIC is dismissed and no longer "is a party". But this conflicts with the principles established by this Court affording the district courts discretion to remand in instances where the federal interests giving rise to original removal jurisdiction have dropped out of the case.

Also, by holding that 12 U.S.C. §1819(b)(2)(A) continues to provide federal question jurisdiction over purely state law claims against parties unrelated to the FDIC even after dismissal of the FDIC, the Fifth Circuit expands the scope of "arising under" jurisdiction beyond the allowable limits of the United States Constitution. Moreover, the Fifth Circuit's holding that 12 U.S.C. §1819(b)(2) confers continuing original federal jurisdiction over otherwise non-removable claims, even after the FDIC is dismissed, is in direct conflict with decisions in the Second, Third, Eighth, Ninth and Tenth Circuit Courts of Appeals. And given the current unstable climate in the nation's economy and in the financial industry in particular, the FDIC's involvement with bank failures will surely continue to rise in the near term. Thus, it is very likely that the question will continue to arise until this Court resolves the conflict among the circuits.

In summary, the Fifth Circuit erred in interpreting "is a party" to mean "ever was a party", and thereby concluding that 12 U.S.C. §1819(b)(2) provides

mandatory continuing federal question jurisdiction over all remaining state law claims even though the FDIC has been dismissed. This Court should grant a writ of certiorari to review the Fifth Circuit's decision and correct that legal error.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 09-30838

ROBERT BAUER, appearing on behalf of themselves and all other persons similarly situated; SALOME LUCINEO BOYD; JIM T BRIGHT; DEBRA BRIGHT; LIONEL J COLEMAN; LYNN L COLEMAN; KEENAN DUCKWORTH; KAREN DUCKWORTH; MATTHEW DAVID DYER; TERRY HARDY, SR; TERESE LABEAUD; ALTON PIERCE; WILLIE LEE RAULS; ROSALYN VELEARY-DODGE; MERCEDES DUTTON

Plaintiffs-Appellees

v.

DEAN MORRIS L.L.P.; COUNTRYWIDE HOME LOANS INC.; JOHN C. MORRIS, III; GEORGE B. DEAN, JR.; CANDICE A COURTEAU; CHARLES H HECK, JR.

Defendants-Appellants

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Washington Mutual Bank

Defendant-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana

(Filed Jan. 25, 2010)

Before JOLLY, WIENER, and STEWART, Circuit Judges.

PER CURIAM:

IT IS ORDERED that this Court's order entered on December 17, 2009, is VACATED.

IT IS FURTHER ORDERED that the motion of appellant Countrywide Home Loans, Inc. for summary reversal of the district court's August 13, 2009 order remanding to state court is GRANTED.

IT IS FURTHER ORDERED that the motion of appellant Countrywide Home Loans, Inc. to stay the district court's order pending resolution of appeal is DENIED AS MOOT.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 09-30781

MARY PATTERSON, Appearing on Behalf of Themselves and All Other Persons Similarly Situated; LARRY PATTERSON; BRIAN BATTISTE; DEBRA ELLZEY-HERRON; THOMAS THIBODEAUX; ALEX HARTLEY; EDNA B TAYLOR; EDWARD CARTER; HELEN CARTER; RONALD SINGLETON; HELEN RATCLIFF; WILLIE BROWN; CHARLES K. BATTISTE; LEONARD ACKLIN; JAWANA ACKLIN; MARLENE AUBERT,

Plaintiffs-Appellees

v.

DEAN MORRIS, L.L.P.; COUNTRYWIDE HOME LOANS, INC.; JOHN C MORRIS, III; GEORGE B DEAN, JR.; CANDICE A COURTEAU; CHARLES H HECK, JR.; AURORA LOAN SERVICES INC; MORTGAGE ELECTRONIC REGISTRATION SERVICES; CHASE HOME FINANCE, L.L.C.,

Defendants-Appellants

Appeal from the United States District Court
for the Eastern District of Louisiana, New Orleans

(Filed Mar. 17, 2010)

Before JOLLY, WIENER, and STEWART, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the motion of appellants Candice A. Courteau, George B. Dean, Jr., Charles H. Heck, Jr., John C. Morris III, and Dean Morris, L.L.P., for summary reversal is [**GRANTED**].

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 09-30838

ROBERT BAUER, appearing on behalf of themselves and all other persons similarly situated; SALOME LUCINEO BOYD; JIM T BRIGHT; DEBRA BRIGHT; LIONELL J COLEMAN; LYNN L COLEMAN; KEENAN DUCKWORTH; KAREN DUCKWORTH; MATTHEW DAVID DYER; TERRY HARDY, SR.; TERESE LABEAUD; ALTON PIERCE; WILLIE LEE RAULS; ROSALYN VELEARY-DODGE; MERCEDES DUTTON,

Plaintiffs-Appellees

v.

DEAN MORRIS L.L.P.; COUNTRYWIDE HOME LOANS INC.; JOHN C. MORRIS, III; GEORGE B. DEAN, JR.; CANDICE A COURTEAU; CHARLES H HECK, JR.

Defendants-Appellants

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Washington Mutual Bank

Defendant-Appellee

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans

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(Filed Dec. 17, 2009)

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the motion of appellant Countrywide Home Loans, Inc. for summary reversal of the district court's August 13, 2009 order remanding to state court is [**CARRIED WITH THE CASE**].

IT IS FURTHER ORDERED that the motion of appellant Countrywide Home Loans, Inc. to stay district court's order pending resolution of appeal is [**GRANTED**].

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ROBERT BAUER, ET AL	**CIVIL ACTION**
VERSUS	**NO. 08-5013**
DEAN MORRIS, L.L.P., ET AL	**SECTION "K"**
MARY & LARRY PATTERSON, ET AL	**CIVIL ACTION NO. 08-5014**
VERSUS	**SECTION "K"**
DEAN MORRIS, L.L.P., ET AL	

ORDER and OPINION

Before the Court in each of the captioned cases is a "Motion for Remand" filed on behalf of plaintiffs.[1] Having heard the oral arguments of the parties in connection with the motions for remand and having reviewed the pleadings, memoranda, and relevant law, the Court, for the reasons assigned, grants the motions.

BACKGROUND

This is the third time that the litigation among these parties has been removed from state court to this Court. Because the Court has previously set forth

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[1] *Bauer v. Dean Morris, L.L.P.*, C.A. 08-5013 (Doc. 85); *Patterson v. Dean Morris, L.L.P.*, C.A. 08-5014 (Doc. 96).

in detail the factual background of these cases,[2] the Court will note only those facts relevant to the determination of these motions to remand.

Following the second remand of these suits, the cases proceeded, apparently uneventfully, until September 25, 2008, when the Director of the Office of Thrift Supervision appointed the Federal Deposit Insurance Corporation as Receiver ("FDIC-Receiver) for Washington Mutual Bank, ("WAMU") an original defendant in both suits. Thereafter the state district court judge signed an order in each case substituting FDIC-Receiver for Washington Mutual Bank.[3] The next day defendants Dean Morris, L.L.P., George B. Dean, Jr., John C. Morris, III, Charles H. Heck, Jr., and Candace [sic] A. Coutreau (collectively "Dean Morris") filed a notice of removal in both suits under 28 U.S.C. §1441(b). Within one week, FDIC-Receiver filed in each suit a Notice of Additional Grounds of Removal citing 12 U.S.C. §§1819(b)(2)(A) and (B)

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[2] *See Patterson v. Dean Morris*, 337 B.R. 82, 84-86 (E.D. La. 2006).

[3] Plaintiffs urge that when the state district judge substituted FDIC-Receiver for WAMU in the *Bauer* suit that WAMU was no longer a defendant in that suit. Because the documents filed in this record do not establish that WAMU had been dismissed prior to the removal of *Bauer* from state court and because FDIC-Receiver has not conceded that WAMU was dismissed from the *Bauer* litigation prior to FDIC-Receiver's entry into the case, the Court deems FDIC-Receiver to have been a party to the *Bauer* suit at the time of its removal.

which address federal court jurisdiction and provides in pertinent part:

> (A) In general
>
> Except as provided in subparagraph (D) [which is not applicable hereto], all suits of a civil nature at common law or in equity to which the Corporation, in any capacity, is a party shall be deemed to arise under the laws of the United States.
>
> (B) Removal
>
> Except as provided in subparagraph (D) [which is not applicable hereto], the Corporation may without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.

Plaintiffs promptly filed a motion to remand each suit contending that defects in Dean Morris's removal of the suit required remand. Alternatively plaintiffs asserted that even if Dean Morris correctly removed each suit that the Court should exercise its discretion under 28 U.S.C. §1441(c) to remand all of the claims in both suits, except those claims against FDIC-Receiver because all of the other claims arose under state law.

On April 1, 2009, the Court held oral argument on the plaintiffs' motions for remand. During that hearing counsel for plaintiffs and counsel for FDIC-Receiver indicated for the first time that they had reached an informal agreement under which plaintiffs would dismiss in each suit their claims against the FDIC-Receiver in both suits and that FDIC-Receiver would in turn dismiss its cross claims against Dean Morris, L.L.P. and its third party claims against Continental Casualty Company, The parties advised the Court that FDIC approval of the agreement was needed to finalize the agreement, and that such approval was expected to occur within two weeks. The FDIC subsequently approved the agreement. Thereafter plaintiffs and FDIC-Receiver filed a joint motion to dismiss plaintiffs claims against FDIC-Receiver and FDIC-Receiver's claims against Dean Morris, L.L.P. and Continental in each suit. During a hearing held on July 29, 2009, the Court granted the joint motions to dismiss and heard additional oral argument on the motions to remand.

LAW AND ANALYSIS

It is undisputed that once the state court substituted FDIC-Receiver for WAMU as a defendant that 12 U.S.C. §1819(A) provided federal jurisdiction over all of the claims in these suits and that such jurisdiction continues even now that FDIC-Receiver has been dismissed from both suits. The relevant issue is whether having dismissed FDIC-Receiver, as a party to this litigation, the Court has discretion pursuant to

28 U.S.C. §1367(c)(3)[4] or §1441(c)[5] to remand the remaining claims to state court.

"All suits of a civil nature . . . to which the [FDIC] in any capacity, is a party shall be deemed to arise under the laws of the United States." 12 U.S.C. §1819(b)(2)(A). In the seminal case of *Buchner v. FDIC*, 981 F.2d 816, 819 (5th Cir. 1993), the Fifth Circuit addressed the propriety of remanding to state court claims which had been filed pursuant to state law. In concluding that remand of such claims against the FDIC was precluded, the Fifth Circuit stated:

> As the FDIC is a party to the present suit, all of the component claims are conclusively deemed to have arisen under federal law. And, as [28 U.S.C.] §1441(c) authorizes the federal district court to remand only those matters in which state law predominates, this discretionary remand provision is inapplicable in the instant action.

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[4] Title 28 U.S.C. §1367(c) permits a district court "to decline supplemental jurisdiction over a claim under subsection (a) [of §1367] if . . . the district court has dismissed all claims over which it has original jurisdiction."

[5] Title 28 U.S.C. §1441(c) provides that "[w]henever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 . . . is joined with one or more otherwise non-removable claims or causes of action the entire case may be removed and the district court may determine all issues therein, or, in its discretion may remand all matters in which State law predominates."

Id. Admittedly the presence of the FDIC-Receiver in these cases bestowed original jurisdiction over all of the claims raised therein. Nonetheless, *Buchner* is not dispositive of in this case because here FDIC-Receiver is no longer a party and there is no federal interest to protect in the claims pending against other defendants which undeniably arose under state law.

The parties have not cited, nor has the Court located, any Fifth Circuit precedent specifically addressing the propriety of remanding to state court claims against other parties based on state law once the FDIC has been dismissed from the suit. Although defendants urge that *Walker v. F.D.I.C.*, 970 F.2d 114 (5th Cir. 1992) and *F.D.I.C. v. Griffin*, 935 F.2d 691 (5th Cir. 1991) support the denial of the motion to remand, the Court concludes that neither of those cases presents the precise situation involved herein, i.e., whether having dismissed the FDIC-Receiver from the suits, the Court has discretion to remand to state court the remaining claims which all arose under state law. In *Walker* the Fifth Circuit addressed the altogether different issue of whether it had jurisdiction over an appeal of the district court's grant of summary judgment in favor of the FDIC and individual defendants once the FDIC had settled its claims and been dismissed from the appeal.

Griffin is also inapposite. In *Griffin*, First Texas Savings Association ("First Texas") filed suit in state court against the guarantor of a promissory note to recover the deficiency due on a note. After the Federal

Home Loan Bank Board placed First Texas into receivership and appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as receiver for First Texas, the FSLIC removed the suit to federal court. Thereafter the FDIC succeeded the FSLIC as the receiver for First Texas. Following the removal of the suit, the FDIC assigned the guarantee and the promissory note to First Gibralter, which had purchased the assets and assumed the secured liabilities for First Texas, and the FDIC ceased pursuing its claims against the guarantor. Additionally, the guarantor filed several counterclaims against the FDIC which he later dismissed. The district court held the guarantor liable under the guaranty. The guarantor appealed urging, in pertinent part, that the federal district court lacked subject matter jurisdiction and should have remanded the suit to state court because the FDIC was no longer a party. The Fifth Circuit concluded that federal jurisdiction survived the dismissal of the FDIC stating:

> The policy reasons for insuring federal jurisdiction over cases involving the actions of failed thrifts continue when the FDIC is voluntarily dismissed as a party *and* the owner of the failed thrift's assets remains. A transferee from FSLIC or FDIC, as successors of their interests, is still entitled to the protection of federal courts applying *D'Oench Duhme,* even when FSLIC or FDIC is voluntarily dismissed.

Id. (emphasis added). Unlike *Griffin* in which the owner of the assets of the failed thrift remained a party to the suit, here FDIC-Receiver, the party with control over the assets of WAMU, is no longer a party and there is no federal interest in the claims remaining before the Court.

Adair v. Amerus Leasing, Inc., 566 F.Supp. 2d 518 (S.D. Ms. 2008) is apparently the only case precisely on point. There certain borrowers filed suit in state court against a national bank for various claims arising under Mississippi law. After the FDIC was appointed Receiver for the successor to one of the suit's original defendants, the FDIC removed the suit to federal court pursuant to 12 U.S.C. 1819(b)(2) and 28 U.S.C. §1331. Thereafter plaintiffs and the FDIC moved to dismiss the claims against the FDIC, and the plaintiffs moved to remand the suit to state court. The district court granted the motions to dismiss the FDIC and granted plaintiffs' motion to remand, The court opined:

> There is no merit to defendants' suggestion that the court must deny plaintiffs' motion to remand solely because there was federal jurisdiction at the time of removal. Unquestionably there was jurisdiction at the time of removal based on the FDIC's presence in the suit; and that jurisdiction continues despite dismissal of the FDIC. However, the fact that the court *may* continue to exercise jurisdiction does not mean that it should do so.

Id. at 520. The Court further stated:

> This court previously declined to exercise supplemental jurisdiction over this case following the elimination of the basis for federal jurisdiction which prompted the original removal. There is no more reason to do so now than before, and therefore, the court will grant plaintiffs' motion to remand.

Id. at 525. There is no basis for distinguishing *Adair* from the instant case.[6] There is no federal interest in the remaining claims which requires the protection of the federal court thereby necessitating the exercise of federal jurisdiction over the claims. Moreover judicial efficiency weighs in favor of remand. There has been little or no substantive action in these cases since their removal from state court. For all the reasons stated, the Court declines to exercise jurisdiction over the purely state law claims remaining in these two cases. Accordingly,

IT IS ORDERED that the motions to remand are GRANTED;

IT IS FURTHER ORDERED that the captioned cases be remanded to the Civil District Court for the Parish of Orleans.

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[6] An appeal of the *Adair* decision is presently pending in the United States Court of Appeals Fifth Circuit. See *Adair v. Lease Partners, Inc.* No. 08-60674.

New Orleans, Louisiana, this 12th day of August, 2009.

/s/ Stanwood R. Duval, Jr.
STANWOOD R. DUVAL, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ROBERT BAUER, ET AL	**CIVIL ACTION**
VERSUS	**NO. 08-5013**
DEAN MORRIS, L.L.P., ET AL	**SECTION "K"(4)**

ORDER

(Filed Aug. 12, 2009)

On July 29, 2009, the Court held oral argument on the "Joint Motion for Entry of Dismissal Order" filed on behalf of plaintiffs and defendant Federal Deposit Insurance Corporation, in its capacity as Receiver for Washington Mutual Bank (Doc. 64) and the "Motion for Leave to File Cross Claim" filed on behalf of defendants Dean Morris, LLP, George B. Dean, Jr., John C. Morris, III, Charles H. Heck, Jr., and Candace [sic] A. Coutreau (Doc. 80). For the oral reasons stated on the record at the hearing, the Court granted the "Joint Motion for Entry of Dismissal Order" and denied the "Motion for Leave to File Cross Claim." Accordingly,

IT IS ORDERED that any and all claims by plaintiffs against Federal Deposit Insurance Corporation, in its capacity as Receiver for Washington Mutual Bank be and hereby dismissed with prejudice, each party to bear its own costs;

IT IS FURTHER ORDERED that any defendant class as to which plaintiffs seek certification in this action will exclude Federal Deposit Insurance

Corporation, in its capacity as Receiver for Washington Mutual Bank;

IT IS FURTHER ORDERED that the cross claims of Federal Deposit Insurance Corporation, in its capacity as Receiver for Washington Mutual Bank's against defendant Dean Morris, LLP, be and hereby are dismissed with prejudice, each party to bear their own costs;

IT IS FURTHER ORDERED that the third-party claims of Federal Deposit Insurance Corporation, in its capacity as Receiver for Washington Mutual Bank's against Continental Casualty Company be and hereby are dismissed without prejudice, each party to bear its own costs.

IT IS FURTHER ORDERED that the "Motion for Leave to File Cross Claim" filed on behalf of defendants Dean Morris, LLP, George B. Dean, Jr., John C. Morris, III, Charles H. Heck, Jr., and Candace [sic] A. Coutreau is DENIED.

New Orleans, Louisiana, this 12th day of August, 2009.

/s/ Stanwood R. Duval, Jr.
STANWOOD R. DUVAL, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARY & LARRY PATTERSON, ET AL	**CIVIL ACTION**
	NO. 08-5014
VERSUS	**SECTION "K"**
DEAN MORRIS, L.L.P., ET AL	

ORDER

(Filed Aug. 6, 2009)

On July 29, 2009, the Court held oral argument on the "Joint Motion for Entry of Dismissal Order" filed on behalf of plaintiffs and defendant Federal Deposit Insurance Corporation, in its capacity as Receiver for Washington Mutual Bank (Doc. 76) and the "Motion for Leave to File Cross Claim" filed on behalf of defendants Dean Morris, LLP, George B. Dean, Jr., John C. Morris, III, Charles H. Heck, Jr., and Candace [sic] A. Coutreau (Doc. 93). For the oral reasons stated on the record at the hearing, the Court granted the "Joint Motion for Entry of Dismissal Order" and denied the "Motion for Leave to File Cross Claim." Accordingly,

IT IS ORDERED that any all claims by plaintiffs against Federal Deposit Insurance Corporation, in its capacity as Receiver for Washington Mutual Bank, including those by named plaintiffs Marlene Aubert (who was substituted on behalf of Melvin Franklin) and Jacqueline Withrow (who was substituted on behalf of her deceased mother Edna Taylor)

be are hereby are dismissed without prejudice, each party to bear their own costs;

IT IS FURTHER ORDERED that any defendant class as to which plaintiffs seek certification will exclude Federal Deposit Insurance Corporation, in its capacity as Receiver for Washington Mutual Bank;

IT IS FURTHER ORDERED that the cross claims of Federal Deposit Insurance Corporation, in its capacity as Receiver for Washington Mutual Bank's against defendant Dean Morris, LLP, be and hereby are dismissed with prejudice, each party to bear its own costs;

IT IS FURTHER ORDERED that the third-party claims of Federal Deposit Insurance Corporation, in its capacity as Receiver for Washington Mutual Bank's against Continental Casualty Company be and hereby are dismissed without prejudice, each party to bear its own costs.

IT IS FURTHER ORDERED that the "Motion for Leave to File Cross Claim" filed on behalf of defendants Dean Morris, LLP, George B. Dean, Jr., John C. Morris, III, Charles H. Heck, Jr., and Candace [sic] A. Coutreau is DENIED.

New Orleans, Louisiana, this 6th day of August, 2009.

/s/ Stanwood R. Duval, Jr.
STANWOOD R. DUVAL, JR.
UNITED STATES DISTRICT JUDGE

CIVIL DISTRICT COURT
FOR THE PARISH OR ORLEANS

STATE OF LOUISIANA

NO. 05-2173 DIVISION "L" SECTION 5

ROBERT BAUER, SALOME LUCINEO BOYD, JIM T. & DEBRA BRIGHT, LIONELL J. COLEMAN, LYNN L. COLEMAN, KEENAN & KAREN DUCKWORTH, MERCEDES DUTTON, MATTHEW DAVID DYER, TERRY HARDY, SR., TERESE LaBEAUD, ALTON PIERCE, WILLIE LEE RAULS, and ROSALYN VELEARY-DODGE,

VERSUS

DEAN MORRIS, L.L.P., BANKER'S TRUST OF CALIFORNIA, CHASE MANHATTAN MORTGAGE CORPORATION, WASHINGTON MUTUAL, INC., MORTGAGE ELECTRONICS REGISTRATION SYSTEMS, INC., COUNTRY-WIDE HOME LOANS, INC., BANK ONE CORPORATION, SUN FINANCE COMPANY, L.L.C., OCWEN MORTGAGE COMPANY, L.L.C., FLAGSTAR BANK, INC., JOHN C. MORRIS, III, GEORGE DEAN, JR., CANDICE A. COURTEAU, and CHARLES H. HECK, JR.,

ORDER SUBSTITUTING FEDERAL DEPOSIT INSURANCE CORPORATION AS DEFENDANT

This Court, having read and considered Defendant FDIC-Receiver's Ex Parte Motion For Substitution of Party (the "Motion"), and found that good cause exists therefore,

IT IS HEREBY ORDERED that the Motion is **GRANTED** as follows:

1. The Federal Deposit Insurance Corporation in its capacity as the Receiver for Washington Mutual Bank is hereby substituted as the real party in interest in this case for Washington Mutual Bank and Washington Mutual, Inc.

2. The case caption and docket of this case shall be amended accordingly to identify the Federal Deposit Insurance Corporation in its capacity as the Receiver for Washington Mutual Bank as a named defendant in place of Washington Mutual, Inc.

IT IS SO ORDERED.

New Orleans, Louisiana, this 25th day of November, 2008.

(Sgd.) Kern A. Reese
Kern A. Reese, Judge

CIVIL DISTRICT COURT
FOR THE PARISH OR ORLEANS

STATE OF LOUISIANA

NO. 05-2173 DIVISION "L" SECTION 5

MARY & LARRY PATTERSON, BRIAN BATTISTE, DEBRA ELLZEY HERRON, THOMAS THIBODEAUX, ALEX HARTLEY, EDNA B. TAYLOR, EDWARD & HELEN CARTER, DEMETURIE SIMMONS, MELVIN FRANKLIN, RONALD SINGLETON, HELEN RATCLIFF, WILLIE BROWN, CHARLES K. BATTISTE, LEANARD [sic] & JAWANA ACKLIN,

VERSUS

DEAN MORRIS, L.L.P., PROVIDENT BANK, OPTION ONE MORTGAGE CORPORATION, THE LEADER MORTGAGE COMPANY, LLC, SAXON MORTGAGE SERVICES, INC., FIDELITY BANK, LONG BEACH MORTGAGE COMPANY, CHASE MANHATTAN MORTGAGE CORPORATION, WASHINGTON MUTUAL, INC., INTERBAY FUNDING, LLC, US BANK, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., COUNTRYWIDE HOME LOANS, INC., JOHN C. MORRIS, III, GEORGE B. DEAN, JR., CANDICE A. COURTEAU, CHARLES H. HECK, JR.

ORDER SUBSTITUTING FEDERAL DEPOSIT INSURANCE CORPORATION AS DEFENDANT

This Court, having read and considered Defendant FDIC-Receiver's *Ex Parte* Motion For Substitution of

Party (the "Motion"), and found that good cause exists therefore,

IT IS HEREBY ORDERED that the Motion is **GRANTED** as follows:

1. The Federal Deposit Insurance Corporation in its capacity as the Receiver for Washington Mutual Bank is hereby substituted as the real party in interest in this case for Washington Mutual Bank, Washington Mutual, Inc., and Long Beach Mortgage Company.

2. The case caption and docket of this case shall be amended accordingly to identify the Federal Deposit Insurance Corporation in its capacity as the Receiver for Washington Mutual Bank as a named defendant in place of Washington Mutual, Inc. and Long Beach Mortgage Company.

IT IS SO ORDERED.

New Orleans, Louisiana, this 25th day of November, 2008.

(Sgd.) Kern A. Reese
Kern A. Reese, Judge

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 05-2173 DIVISION "L" SECTION (6)

ROBERT BAUER, ET AL.

VERSUS

DEAN MORRIS, L.L.P., ET AL.

– CONSOLIDATED WITH –

NO. 05-2174 DIVISION "L" SECTION (6)

MARY & LARRY PATTERSON, ET AL

VERSUS

DEAN MORRIS, L.L.P., ET AL.

FILED: _____

DEPUTY CLERK

JUDGMENT

This matter came before the trial court on April 27, 2007.

PRESENT: Robert Murphy, Billy Gibbens, and Stephen Kreller, attorneys for the PLAINTIFFS; and

Gus A. Fritchie, III, Sidney A. Cotlar, Edward W. Trapolin, attorneys for DEFENDANT DEAN MORRIS; and

Jeff Storms and Nick Whalen attorneys for DEFENDANT U.S. BANK AND LEADER; and

Glenn P. Orgeron, attorney for DEFENDANT OCWEN; and

Donald Naylor, Gerard Wimberly, Jr. attorneys for DEFENDANT COUNTRYWIDE; and

James A. Brown, attorney for DEFENDANTS CHASE HOME FINANCE, LLC and JP MORGAN CHASE; and

Chris Caine, attorney for DEFENDANT NATIONAL CITY MORTGAGE; and

Charlotte Meade, attorney for DEPENDANT CONTINENTAL CASUALTY COMPANY; and
Phillip D. Rubins, In Proper Person

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's motion for new trial as to the vicarious liability claims against Defendant Ocwen Loan is DENIED.

IT IS ORDERED, ADJUDGED AND DECREED that Defendant Countrywide Home Loans's motion to compel as to the above named Plaintiffs is GRANTED.

IT IS ORDERED, ADJUDGED AND DECREED that Defendant JP Morgan Chase's motion to compel as to the above named Plaintiffs is

GRANTED. Plaintiff has until June 30, 2007 to respond.

IT IS ORDERED, ADJUDGED AND DECREED that Defendant JP Morgan Chase's motion [sic] strike preliminary witness and exhibit lists as to the above named Plaintiffs is GRANTED in part and DENIED in part. Plaintiff's preliminary list of three hundred twenty-four witnesses and thousands of documents makes litigation unweilding [sic] and needs to be streamlined.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Exceptions of No Cause or Right of Action as to Mercedes Dutton, Edna B. Taylor are DENIED. Plaintiffs may amend their petition.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants exception of res judicata as to Mercedes Dutton, Edna B. Taylor, and Demeturie Taylor is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants exceptions of prescreption [sic] as to Mercedes Dutton and Edna B. Taylor is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Dean Morris's motions to strike and for sanctions as to Mercedes Dutton, Edna B. Taylor, and Demeturie Taylor are DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Dean Morris's motion to dismiss for failure to join party need for adjudication as to Plaintiff Demeturie Taylor is DENIED. Citibank is not deemed to be an indespensible [sic] party at the present.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Dean Morris's exception of no cause of action for Plaintiff Willie Lee Rauls is GRANTED. Plaintiff is dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Chase Home Finance's motion to set deadlines for Plaintiff Salome Lucineo Boyd to be substituted into this action is GRANTED. Plaintiffs have seven days to file a motion to substitute.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant US Bank's motion to compel deposition of Phillip Rubins claims is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Leader Mortgage Company's motion to compel deposition of Phillip Rubins claims is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Washington Mutual and Countrywide's joint motion to compel deposition of Phillip Rubins claims is GRANTED.

New Orleans, this 8th day of May, 2007.

/s/ Kern A. Reese
HONORABLE KERN A. REESE
DIVISION "L"

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS STATE OF LOUISIANA

CASE NO.: 05-2174 DIVISION "E" SECTION

MARY & LARRY PATTERSON, BRIAN BATTISTE, DEBRA ELLZEY-HERRON, THOMAS THIBODEAUX, ALEX HARTLEY, EDNA B. TAYLOR, EDWARD & HELEN CARTER, DEMETURIE SIMMONS, MELVIN FRANKLIN, RONALD SINGLETON, HELEN RATCLIFF, WILLIE BROWN, CHARLES K. BATTISTE, LEONARD & JAWANA ACKLIN,

VERSUS

DEAN MORRIS, L.L.P., PROVIDENT BANK, OPTION ONE MORTGAGE CORPORATION, THE LEADER MORTGAGE COMPANY, LLC., SAXON MORTGAGE SERVICES, INC., AURORA LOAN SERVICES, INC, FIDELITY BANK, LONG BEACH MORTGAGE COMPANY, CHASE MANHATTAN MORTGAGE CORPORATION, WASHINGTON MUTUAL, INC., INTERBAY FUNDING, LLC, US BANK, MORTGAGE ELECTRONICS REGISTRATION SYSTEMS, INC., COUNTRYWIDE HOME LOANS, INC., JOHN C. MORRIS, III, GEORGE B. DEAN, JR., CANDICE A. COURTEAU, CHARLES H. HECK, JR.

FILED: Feb. 17, 2005 /s/ [Illegible]
DEPUTY CLERK

CLASS ACTION PETITION FOR DAMAGES

The Petition of MARY & LARRY PATTERSON, BRIAN BATTISTE, DEBRA ELLZEY-HERRON, THOMAS THIBODEAUX, ALEX HARTLEY, EDNA B. TAYLOR, EDWARD & HELEN CARTER, DEMETURIE SIMMONS, MELVIN FRANKLIN, RONALD SINGLETON, HELEN RATCLIFF, WILLIE BROWN, CHARLES K. BATTISTE, LEONARD & JAWANA ACKLIN, persons of the full age of majority and residents of Orleans Parish, Louisiana, appearing on behalf of themselves and all other persons similarly situated, respectfully represents:

I.

Plaintiffs and those similarly situated are persons against whom collection activities or foreclosure proceedings were commenced by defendants or members of the Defendant Class, and who were charged excessive fees and charges by defendants or members of the Defendant Class. Plaintiffs appear on behalf of themselves and on behalf of a putative Plaintiff Class defined as follows:

> All Louisiana residents (or their heirs, successors, or assigns) who were charged excessive fees and/or charges by a member of the Defendant Class directly or by or through a Defendant Class members' attorney, agent, employee: Dean Morris, L.L.P. The Plaintiff Class includes only those persons whose bankruptcy filing would or might support

removal to federal court and/or federal jurisdiction for their claim. The putative class as defined in this paragraph is hereafter referred to as the "Plaintiff Class."

II.

Made a defendant in this action is DEAN MORRIS, L.L.P. ("Dean Morris"), a Louisiana limited liability partnership domiciled in Ouachita Parish, Louisiana, engaged in the practice of law state-wide, including the practice of law in Orleans Parish, Louisiana. At all relevant times, defendant, Dean Morris, acted as attorney, agent or employee of all other named defendants and of the member of the Defendant Class.

III.

Made defendant is George B. Dean, Jr., a person of the age of majority and a resident of the state of Louisiana.

IV.

Made defendant is John C. Morris, III, a person of the age of majority and a resident of the state of Louisiana.

V.

Made defendant is Candice A. Courteau, a person of the age of majority and a resident of the state of Louisiana.

VI.

Made defendant is Charles H. Heck, Jr., a person of the age of majority and a resident of the state of Louisiana.

VII.

Dean Morris, L.L.P., George B. Dean, Jr., John C. Morris, III, Candice A. Courteau and Charles H. Heck, Jr. Are collectively referred to as DEAN MORRIS, LLP.

VIII.

The following named defendants and those similarly situated, constitute the "Defendant Class," all of whom employed Dean Morris as their attorney and/or agent, (the below-named defendants and the Defendant Class are sometimes referred to collectively as the "Lender Defendants"):

(a) Provident Bank, a foreign corporation authorized to do and doing business in the State of Louisiana.

(b) Option One Mortgage Corporation, a foreign corporation authorized to do and doing business in the State of Louisiana.

(c) The Leader Mortgage Company, LLC., a foreign corporation authorized to do and doing business in the State of Louisiana.

(d) Saxon Mortgage Services, Inc., a foreign corporation authorized to do and doing business in the State of Louisiana.

(e) Aurora Loan Services, Inc., a foreign corporation authorized to do and doing business in the State of Louisiana.

(f) Fidelity Bank, a foreign corporation authorized to do and doing business in the State of Louisiana.

(g) Long Beach Mortgage Company, a foreign corporation authorized to do and doing business in the State of Louisiana.

(h) Chase Manhattan Mortgage Corporation, a foreign corporation authorized to do and doing business in the State of Louisiana.

(i) Washington Mutual, Inc., a foreign corporation authorized to do and doing business in the State of Louisiana.

(j) Interbay Funding, L.L.C., a foreign corporation authorized to do and doing business in the State of Louisiana.

(k) Mortgage Electronics Registration Systems, Inc., a foreign corporation authorized to do and doing business in the State of Louisiana.

(l) US Bank, a foreign corporation authorized to do and doing business in the State of Louisiana.

(m) Countrywide Home Loans, Inc., a foreign corporation authorized to do and doing business in the State of Louisiana.

IX.

The Lender Defendants are representative of a class of similarly situated lenders defined as follows: All Lenders who used Dean Morris, L.L.P. as their attorney, agent, and/or employee, and for whom or during the representation of whom Dean Morris, L.L.P. collected excessive fees and/or charges from members of the Plaintiff Class. National banks are specifically excluded from the Defendant Class.

X.

Dean Morris, acting as the agent and/or employee of all of the Lender Defendants and other members of the Defendant Class, instituted collection and/or foreclosure proceedings against the named plaintiffs and other members of the Plaintiff Class. Collection and/or Foreclosure proceedings occurred in Orleans Parish and, upon information and belief, state-wide.

XI.

During the collection or foreclosure process, defendant Dean Morris overstated to the named plaintiffs and to members of the class the amount of court costs, sheriff's fees, attorney's fees and/or other expenses actually incurred.

XII.

In fact, the amounts quoted and collected for court costs and sheriff's fees and other expenses were substantially inflated above those actual costs.

XIII.

Plaintiff Class members were quoted, and paid, inflated fees and costs on a "reinstatement proposal" sent to them by Dean Morris.

XIV.

In other instances, members of the putative class were unable to reinstate or pay their loan, and foreclosure ensued. Again, defendants' charges were grossly inflated.

XV.

At all relevant times, Dean Morris was acting as attorney agent and/or employee of, in concert with, and/or at the direction of the Lender Defendants or members of the Defendant Class.

XVI.

With regard to the foreclosure proceedings instituted against plaintiffs Mary and James Patterson, defendant Dean Morris was acting as agent and/or employee of defendants, Provident Bank and Option One Mortgage Corporation.

XVII.

With regard to the foreclosure proceedings instituted against plaintiff Brian Battiste, defendant Dean Morris was acting as agent and/or employee of defendant, The Leader Mortgage Company, LLC.

XVIII.

With regard to the foreclosure proceedings instituted against plaintiff Debra Ellzey-Herron, defendant Dean Morris was acting as agent and/or employee of defendant, Saxon Mortgage Services, Inc.

XIX.

With regard to the foreclosure proceedings instituted against plaintiff Thomas Thibodeaux, defendant Dean Morris was acting as agent and/or employee of defendant, Fidelity Bank.

XX.

With regard to the foreclosure proceedings instituted against plaintiff Alex Hartley, defendant

Dean Morris was acting as agent and/or employee of defendant, Aurora Loan Services, Inc.

XXI.

With regard to the foreclosure proceedings instituted against plaintiff Edna B. Taylor, defendant Dean Morris was acting as agent and/or employee of defendant, Litton Loan Services, Inc./Long Beach Mortgage Company.

XXII.

With regard to the foreclosure proceedings instituted against plaintiffs Edward and Helen Carter, and Demeturie Simmons, defendant Dean Morris was acting as agent and/or employee of defendant, Chase Manhattan Mortgage Corporation.

XXIII.

With regard to the foreclosure proceedings instituted against plaintiff Melvin Franklin, defendant Dean Morris was acting as agent and/or employee of defendant, Washington Mutual, Inc.

XXIV.

With regard to the foreclosure proceedings instituted against plaintiff Ronald Singleton, defendant Dean Morris was acting as agent and/or

employee of defendant, The Leader Mortgage Company, LLC.

XXV.

With regard to the foreclosure proceedings instituted against plaintiff Helen Ratcliff, defendant Dean Morris was acting as agent and/or employee of defendant, Interbay Funding, LLC.

XXVI.

With regard to the foreclosure proceedings instituted against plaintiff Willie Brown, defendant Dean Morris was acting as agent and/or employee of defendant, US Bank.

XXVII.

With regard to the foreclosure proceedings instituted against plaintiff Charles Battiste, defendant Dean Morris was acting as agent and/or employee of defendant, Countrywide Home Loans, Inc.

XXVIII.

With regard to the foreclosure proceedings instituted against plaintiffs Leonard and Jawana Acklin, defendant Dean Morris was acting as agent and/or employee of defendant, Aurora Loan Services, Inc./Mortgage Electronics Registration Systems, Inc.

XXIX.

In each of the above-cited instances, and in the circumstances pertaining to all members of the Plaintiff Class, the amounts quoted to and/or collected from plaintiffs as being due and owing for court costs, sheriff's fees, and attorney's fees were inflated. Dean Morris, as the attorney agent and/or employee of the Lender defendants and the members of the Defendant Class, made both knowing and negligent misrepresentations to the named plaintiffs and to members of the Plaintiff Class. The knowing misrepresentations made by or on behalf of defendants constituted fraud as set out more particularly above.

XXX.

The actions of Dean Morris and the Lender Defendants and other members of the Defendant Class, (who were the named plaintiffs in the foreclosure proceedings), constituted conversion and unjust enrichment.

XXXI.

In addition to their liability for the actions of their attorney agent and/or employee, Dean Morris, the Lender Defendants and other members of the Defendant Class are also liable in this action because the Lender Defendants were the named plaintiffs in the foreclosure actions in which the above-described misrepresentations were made. Also, payments of excessive, illegal charges were made to the Lender

Defendants. The Lender Defendants cooperated in, participated in, and authorized the practice of charging, receiving, and not refunding improper, excessive fees.

XXXII.

As a result of the actions of defendant Dean Morris and the Lender Defendants, the named plaintiffs and the members of the putative Plaintiff Class suffered monetary loss in the form of the payment of the inflated fees, costs, and attorney's fees and other harm/injuries related to the excessive charges.

XXXIII.

The representations made by the defendants were falsely made and the defendants knew, reasonably should have known, or were reckless in not knowing that the statements were false.

XXXIV.

The doctrine of contra non volentem is specifically pled as applicable to the named plaintiffs and members of the plaintiff class.

XXXV.

Plaintiffs disclaim any cause of action arising under the Constitution, treaties, or other laws of the United States, including, but not limited to, any claim

arising from an act or omission on a federal enclave or by any officer of the United States or any agent or person acting on behalf of such individual. No claim under admiralty or maritime law is alleged. To the extent this paragraph conflicts with any other allegations herein, this paragraph controls.

XXXVI.

This action is brought and may properly be maintained as a class action pursuant to the provisions of Louisiana Code of Civil Procedure articles 591, et. seq. This action satisfies the numerosity, commonality, typicality, predominance, and superiority requirements of these statutory provisions and the jurisprudence of the courts of the State of Louisiana.

XXXVII.

The members of the putative classes are so numerous that joinder of all members is impracticable. Members of the Defendant Class filed hundreds of foreclosure suits against the Plaintiff Class members in the State of Louisiana annually.

XXXVIII.

The causes of action asserted, and the facts on which these are based, raise questions of law and fact that are common to all members of both classes. These common questions of law predominate over any

questions affecting only individual members of the classes:

(a) Whether defendant Dean Morris, in its role as agent/employee of and the Lender defendants systematically misrepresented and inflated the amount of court costs, sheriff's fees, and attorney's fees due in mortgage foreclosure proceedings.

(b) Whether the Lender Defendants are independently liable for the misrepresentations made in the actions in which they were plaintiffs.

(c) Whether the Lender Defendants are vicariously liable for the actions of Dean Morris.

(d) Whether defendants are liable to plaintiffs for the damages sustained by plaintiffs.

(e) Whether the common use of Dean Morris by all members of the Defendant Class creates a civil conspiracy under La.C.C. art. 2324.

XIX. [sic]

The representative Plaintiffs and Defendants will fairly and adequately protect the interests of the class members.

XL.

The Plaintiff Class and Defendant Class can be defined objectively in terms of verifiable and ascertainable criteria, so that the Court will be able to

determine the constituency of the classes for purposes of the conclusiveness of any judgment that may be rendered.

XLI.

The plaintiffs' claims are typical of the claims of the members of the Plaintiff Class, all of whom were targets of collection activities or were defendants in foreclosure proceedings filed by defendant Dean Morris on behalf of the members of the Defendant Class.

XLII.

The Lender Defendants are representative of the Defendant Class, and all members of the Defendant Class uniformly were represented by Dean Morris, L.L.P. and directly and/or through Dean Morris overcharged the Plaintiff Class.

XLIII.

The class action procedure is superior to other available methods for the fair and efficient adjudication of this litigation because individual litigation of the claims is impracticable. It would be unduly burdensome and overly expensive to the members of the Plaintiff Class, and to the Courts of this State, were it necessary to litigate hundreds of identical individual cases. In contrast, the class action device presents ar fewer management difficulties and provides the benefits of single adjudication, economics of scale, and comprehensive supervision by a single court.

WHEREFORE, the plaintiffs, on behalf of themselves and all other persons similarly situated, pray for judgment against the defendants, individually and as representatives of a class of similarly situated persons or entities, jointly, severally, and *in solido* as follows:

(1) An Order certifying a Plaintiff Class as defined herein, and appointing the plaintiffs and their counsel to represent the Class;

(2) For compensatory damages as alleged herein and as might be proved at trial;

(3) For pre-judgment interest from the date of judicial demand;

(4) For all costs, reasonable expenses of the litigation, expert fees, attorney's fees and penalties as might be available under the applicable law; and

(5) For all general, special, and equitable relief to which the Plaintiffs and the members of the Plaintiff Class are entitled by law.

Respectfully submitted:

Cater & Willis (APLC)

/s/ Jennifer N. Willis

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PLEASE WITHHOLD SERVICE
AS TO ALL DEFENDANTS

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS STATE OF LOUISIANA

CASE NO.: 05-2174 DIVISION "E" SECTION

MARY & LARRY PATTERSON, BRIAN BATTISTE, DEBRA ELLZEY-HERRON, THOMAS THIBODEAUX, ALEX HARTLEY, EDNA B. TAYLOR, EDWARD & HELEN CARTER, DEMETURIE SIMMONS, MELVIN FRANKLIN, RONALD SINGLETON, HELEN RATCLIFF, WILLIE BROWN, CHARLES K. BATTISTE, LEONARD & JAWANA ACKLIN,

VERSUS

DEAN MORRIS, L.L.P., PROVIDENT BANK, OPTION ONE MORTGAGE CORPORATION, THE LEADER MORTGAGE COMPANY, LLC., SAXON MORTGAGE SERVICES, INC., AURORA LOAN SERVICES, INC, FIDELITY BANK, LONG BEACH MORTGAGE COMPANY, CHASE MANHATTAN MORTGAGE CORPORATION, WASHINGTON MUTUAL, INC., INTERBAY FUNDING, LLC, US BANK, MORTGAGE ELECTRONICS REGISTRATION SYSTEMS, INC., COUNTRYWIDE HOME LOANS, INC., JOHN C. MORRIS, III, GEORGE B. DEAN, JR., CANDICE A. COURTEAU, CHARLES H. HECK, JR.

FILED: May 6, 2005 /s/ _____

DEPUTY CLERK

FIRST SUPPLEMENTAL AND AMENDED CLASS ACTION PETITION FOR DAMAGES

The Petition of MARY & LARRY PATTERSON, BRIAN BATTISTE, DEBRA ELLZEY-HERRON, THOMAS THIBODEAUX, ALEX HARTLEY, EDNA B. TAYLOR, EDWARD & HELEN CARTER, DEMETURIE SIMMONS, MELVIN FRANKLIN, RONALD SINGLETON, HELEN RATCLIFF, WILLIE BROWN, CHARLES K. BATTISTE, LEONARD & JAWANA ACKLIN, persons of the full age of majority and residents of Orleans Parish, Louisiana, appearing on behalf of themselves and all other persons similarly situated, respectfully represents:

I.

Plaintiffs and those similarly situated are persons against whom collection activities or foreclosure proceedings were commenced by defendants or members of the Defendant Class, and who were charged excessive fees and charges by defendants or members of the Defendant Class. Plaintiffs appear on behalf of themselves and on behalf of a putative Plaintiff Class defined as follows:

> All Louisiana residents (or their heirs, successors, or assigns) who were charged excessive fees and/or charges by a member of the Defendant Class by or through Dean Morris, L.L.P. The Plaintiff Class includes only those persons whose bankruptcy filing would or might support removal to federal court and/or federal jurisdiction for their claim. The

putative class as defined in this paragraph is hereafter referred to as the "Plaintiff Class."

II.

Made a defendant in this action is DEAN MORRIS, L.L.P. ("Dean Morris"), a Louisiana limited liability partnership domiciled in Ouachita Parish, Louisiana, engaged in the practice of law state-wide, including the practice of law in Orleans Parish, Louisiana. At all relevant times, defendant, Dean Morris, acted as attorney, agent, and/or employee of the Lender Defendants.

III.

Made defendant is George B. Dean, Jr., a person of the age of majority and a resident of the State of Louisiana.

IV.

Made defendant is John C. Morris, III, a person of the age of majority and a resident of the State of Louisiana.

V.

Made defendant is Candice A. Courteau, a person of the age of majority and a resident of the State of Louisiana.

VI.

Made defendant is Charles H. Heck, Jr., a person of the age of majority and a resident of the State of Louisiana.

VII.

Dean Morris, L.L.P., George B. Dean, Jr., John C. Morris, III, Candice A. Courteau and Charles H. Heck, Jr. are collectively referred to as DEAN MORRIS.

VIII.

The following named defendants and those similarly situated, constitute the "Defendant Class," all of whom employed Dean Morris as their attorney, agent, and/or employee, (the below-named defendants and the Defendant Class are sometimes referred to collectively as the "Lender Defendants"):

(a) Provident Bank, a foreign corporation doing business in the State of Louisiana.

(b) Option One Mortgage Corporation, a foreign corporation doing business in the State of Louisiana.

(c) The Leader Mortgage Company, LLC., a foreign company doing business in the State of Louisiana.

(d) Saxon Mortgage Services, Inc., a foreign corporation doing business in the State of Louisiana.

(e) Aurora Loan Services, Inc., a foreign corporation doing business in the State of Louisiana.

(f) Long Beach Mortgage Company, a foreign corporation doing business in the State of Louisiana.

(g) Chase Manhattan Mortgage Corporation, a foreign corporation doing business in the State of Louisiana.

(h) Washington Mutual, Inc., a foreign corporation doing business in the State of Louisiana.

(i) Interbay Funding, L.L.C., a foreign company doing business in the State of Louisiana.

(j) Mortgage Electronics Registration Systems, Inc., a foreign corporation doing business in the State of Louisiana.

(k) U.S. Bank, a foreign corporation doing business in the State of Louisiana.

(l) Countrywide Home Loans, Inc., a foreign corporation doing business in the State of Louisiana.

IX.

The Lender Defendants named herein are representative of a class of similarly situated lenders defined as follows: All Lenders who used Dean Morris as their attorney, agent, and/or employee with respect to collection or foreclosure activities involving any member of the Plaintiff Class, and for whom or

during the representation of whom Dean Morris collected excessive fees and/or charges from members of the Plaintiff Class. National banks are specifically excluded from the Defendant Class.

X.

Dean Morris, acting as the attorney, agent, and/or employee of all of the Lender Defendants instituted collection and/or foreclosure proceedings against the named plaintiffs and other members of the Plaintiff Class. Collection and/or foreclosure proceedings occurred in Orleans Parish and, upon information and belief, state-wide.

XI.

During the collection and/or foreclosure process, defendant Dean Morris overstated to the named plaintiffs and to members of the Plaintiff Class the amount of court costs, sheriff's fees, attorney's fees and/or other expenses actually, incurred.

XII.

In fact, the amounts quoted and collected for court costs and sheriff's fees and other expenses were substantially inflated above those actually incurred.

XIII.

Plaintiff Class members were quoted, and paid, and/or suffered harm because of difficulty paying inflated fees and costs on a "reinstatement proposal" or other document sent to them by Dean Morris.

XIV.

In other instances, members of the putative class were unable to reinstate or pay their loan (with the overstated charges), and foreclosure ensued. Again, defendants' charges were grossly inflated.

XV.

At all relevant times, Dean Morris was acting as attorney, agent, and/or employee of, in concert with, and/or at the direction of the Lender Defendants.

XVI.

With regard to plaintiffs Mary and James Patterson, defendant Dean Morris was acting as attorney, agent, and/or employee of defendants, Provident Bank and Option One Mortgage Corporation.

XVII.

With regard to plaintiff Brian Battiste, defendant Dean Morris was acting as attorney, agent, and/or employee of defendant, The Leader Mortgage Company, LLC.

XVIII.

With regard to plaintiff Debra Ellzey-Herron, defendant Dean Morris was acting as attorney, agent, and/or employee of defendant, Saxon Mortgage Services, Inc.

XIX.

With regard to plaintiff Alex Hartley, defendant Dean Morris was acting as attorney, agent, and/or employee of defendant, Aurora Loan Services, Inc.

XX.

With regard to plaintiff Edna B. Taylor, defendant Dean Morris was acting as attorney, agent, and/or employee of defendant, Long Beach Mortgage Company.

XXI.

With regard to plaintiffs Edward and Helen Carter, and Demeturie Simmons, defendant Dean Morris was acting as attorney, agent, and/or employee of defendant, Chase Manhattan Mortgage Corporation.

XXII.

With regard to plaintiff Melvin Franklin, defendant Dean Morris was acting as attorney, agent, and/or employee of defendant, Washington Mutual, Inc.

XXIII.

With regard to plaintiff Ronald Singleton, defendant Dean Morris was acting as attorney, agent, and/or employee of defendant, The Leader Mortgage Company, LLC.

XXIV.

With regard to plaintiff Helen Ratcliff, defendant Dean Morris was acting as attorney, agent, and/or employee of defendant, Interbay Funding, LLC.

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With regard to plaintiff Willie Brown, defendant Dean Morris was acting as attorney, agent, and/or employee of defendant, US Bank.

XXVI.

With regard to plaintiff Charles Battiste, defendant Dean Morris was acting as attorney, agent, and/or employee of defendant, Countrywide Home Loans, Inc.

XXVII.

With regard to plaintiffs Leonard and Jawana Acklin, defendant Dean Morris was acting as attorney, agent, and/or employee of defendant, Aurora Loan Services, Inc./Mortgage Electronics Registration Systems, Inc.

XXVIII.

In each of the above-cited instances, and in the circumstances pertaining to all members of the Plaintiff Class, the amounts quoted to and/or collected from plaintiffs as being due and owing for court costs, sheriff's fees, and attorney's fees were inflated. Dean Morris, as the attorney, agent and/or employee of the Lender Defendants, made both knowing and negligent misrepresentations to the named plaintiffs and to members of the Plaintiff Class. The knowing misrepresentations made by or on behalf of defendants constituted fraud as set out more particularly above.

XXIX.

The actions of Dean Morris and the Lender Defendants, (who were the principals and beneficiaries of the collection and foreclosure activities, and were the named plaintiffs in the foreclosure proceedings), constituted conversion and unjust enrichment.

XXX.

In addition to their liability for the actions of their attorney, agent and/or employee, Dean Morris, the Lender Defendants are also liable in this action because the Lender Defendants instituted the collection proceedings and were the named plaintiffs in the foreclosure actions in which the above-described misrepresentations were made. Also, payments of excessive, illegal charges were made to the Lender Defendants or their attorney, agent, and/or employee.

The Lender Defendants cooperated in, participated in, and authorized the practice of charging, receiving, and not refunding improper, excessive fees.

XXXI.

As a result of the actions of defendant Dean Morris and the Lender Defendants, the named plaintiffs and the members of the putative Plaintiff Class suffered monetary loss in the form of the payment of the inflated fees, costs, and attorney's fees and other harm/injuries related to the excessive charges.

XXXII.

The representations made by the defendants were falsely made, and the defendants knew, reasonably should have known, or were reckless in not knowing that the statements were false.

XXXIII.

The doctrine of *contra non valentem* is specifically pled as applicable to the named plaintiffs and members of the Plaintiff Class.

XXXIV.

Plaintiffs disclaim any cause of action arising under the Constitution, treaties, or other laws of the United States, including, but not limited to, any claim arising from an act or omission on a federal enclave

or by any officer of the United States or any agent or person acting on behalf of such individual. No claim under admiralty or maritime law is alleged. To the extent this paragraph conflicts with any other allegations herein, this paragraph controls.

XXXV.

This action is brought and may properly be maintained as a class action pursuant to the provisions of Louisiana Code of Civil Procedure articles 591, et. seq. This action satisfies the numerosity, commonality, typicality, predominance, and superiority requirements of these statutory provisions and the jurisprudence of the courts of the State of Louisiana.

XXXVI.

The members of the putative classes are so numerous that joinder of all members is impracticable.

XXXVII.

The causes of action asserted, and the facts on which these are based, raise questions of law and fact that are common to all members of both classes. These common questions of law predominate over any questions affecting only individual members of the classes:

(a) Whether defendant Dean Morris, in its role as attorney, agent, and/or employee of the

Lender Defendants systematically misrepresented and inflated the amount of court costs, sheriff's fees, and attorney's fees due.

(b) Whether the Lender Defendants are independently liable for the misrepresentations made in the actions in which they were plaintiffs.

(c) Whether the Lender Defendants are vicariously liable for the actions of Dean Morris.

(d) Whether defendants are liable to plaintiffs for the damages sustained by plaintiffs.

(e) Whether a civil conspiracy existed under Louisiana Civil Code Article 2324.

XXXVIII.

The representative plaintiffs and defendants will fairly and adequately protect the interests of the class members.

XXXIX.

The Plaintiff Class and Defendant Class can be defined objectively in terms of verifiable and ascertainable criteria, so that the Court will be able to determine the constituency of the classes for purposes of the conclusiveness of any judgment that may be rendered.

XL.

The plaintiffs' claims are typical of the claims of the members of the Plaintiff Class, all of whom were targets of collection activities or were defendants in foreclosure proceedings filed by defendant Dean Morris on behalf of the members of the Defendant Class.

XLI.

The Lender Defendants are representative of the Defendant Class, and all members of the Defendant Class uniformly were represented by Dean Morris, L.L.P. and directly and/or through Dean Morris overcharged the Plaintiff Class.

XLII.

The class action procedure is superior to other available methods for the fair and efficient adjudication of this litigation because individual litigation of the claims is impracticable. It would be unduly burdensome and overly expensive to the members of the Plaintiff Class, and to the courts of this state, were it necessary to litigate hundreds of identical individual cases. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

WHEREFORE, the plaintiffs, on behalf of themselves and all other persons similarly situated, pray

for judgment against the defendants, individually and as representatives of a class of similarly situated persons or entities, jointly, severally, and *in solido* as follows:

(1) For an Order certifying a Plaintiff Class as defined herein, and appointing the plaintiffs and their counsel to represent the Class;

(2) For an Order certifying a Defendant Class as defined herein;

(3) For compensatory damages as alleged herein and as might be proved at trial;

(4) For pre-judgment interest from the date on which defendants violated the excessive charges and/or from the date of judicial demand;

(5) For all costs, reasonable expenses of the litigation, expert fees, attorney's fees and penalties as might be available under the applicable law; and

(6) For all general, special, and equitable relief to which the Plaintiffs and the members of the Plaintiff Class are entitled by law.

Respectfully submitted:

MURPHY, ROGERS, SLOSS & GAMBEL

/s/ Gary J. Gambel

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